CLEMENCY COMMISSION: Resolution of House of Representa-
tives to, binding force of.  

March 10, 1939.

Mr. J. T. Arbuckle,  
Mr. J. W. Yost,  
Mrs. Martha C. Salb,  
Members of the State Commission of Clemency,  
State House,  
Indianapolis, Indiana.

Dear Sirs and Madam:

I have before me the resolution of the House of Representatives of the General Assembly of the State of Indiana sent to me by you, which reads as follows:

"House Resolution No. 31  
(Adopted)  
February 27, 1939.

Mr. Speaker:

I offer the following resolution and move its adoption:

Whereas, David C. Stephenson has served thirteen years in the State Penitentiary at Michigan City, and  
Whereas, he has never been permitted in Court on rehearing, or otherwise, to bring forward matters which he alleges would entitle him to clemency, or a new trial;  
Now, Therefore, Be It Resolved, by the House of Representatives of the Eighty-first General Assembly of the State of Indiana, that we hereby and herewith respectfully request the Clemency Board of the State of Indiana, to hold a special hearing on the case of said David C. Stephenson, and permit those connected with his prosecution to appear, together with David C. Stephenson, and such witnesses as he may desire to present, to the end that said board may be fully informed; and that said board, when so informed, take such action, or make such recommendation as they, in their official capacity, may do, to the end that justice may be done.

And further, That said board shall employ a competent stenographer, at the expense of the defendant,
David C. Stephenson, and the report of the evidence shall be transcribed and submitted to the governor of the State of Indiana for his consideration.


Representatives."

Likewise, have your request for an opinion as to the effect of such resolution, which request reads as follows:

"The attached is a copy of a resolution which was adopted by the House of Representatives of the General Assembly of the State of Indiana on the 27th day of February, 1939.

It will be observed that said resolution requests the Commission on Clemency to make an investigation of the case of David C. Stephenson, a life prisoner at the Indiana State Prison, and to make a recommendation to the governor as to whether said Stephenson should be paroled from prison.

The rules, adopted by this commission and approved by the governor, require a person convicted of murder and sentenced to prison for life to serve at least 15 years before he is eligible to file a petition for parole and be heard by our commission. Mr. Stephenson has served only 13 years and therefore is not eligible to have his case heard under our rules.

Question: May we have your opinion as to the binding force of attached resolution on our commission, and whether it is mandatory on the commission to comply with this request, and can the commission be required by this resolution to set aside its rule and hear this case at this time? A copy of our rules is attached hereto. We would appreciate an early ruling, for which please accept our thanks."

In reply to your request, I find that article 3, section 1 of the Constitution of Indiana reads as follows:

"The powers of the government are divided into three separate departments: the legislative, the executive including the administrative, and the judicial; and no person, charged with official duties under one of
these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided."

From the wording of the above section of the Constitution of the State of Indiana, it is clear that the Legislative Department of the government of the State of Indiana has no control over the Executive Department of the government of the State of Indiana, of which your board is a part, and therefore their resolution as presented to your board is merely a request from one department of the government of Indiana to another requesting that they do a certain thing, and in no way is the request so received by you from the House of Representatives of the State of Indiana compulsory upon your State Commission of Clemency Board to so do. However, should your board feel as if such request, having come from the House of Representatives of the State of Indiana, should be honored because of such request coming from the source from which it did, the House of Representatives of the State of Indiana, no doubt your board could exercise its discretion which it has concerning hearings and disregard the rule adopted by your commission, that is, "the rule which requires a person convicted of murder and sentenced to prison for life to serve at least 15 years before being eligible to file a petition for parole and be heard by your commission," and allow David C. Stephenson to file his petition and be heard.

In other words, the resolution is not binding upon your commission so as to compel it to act according to the resolution, but I believe you may, if you so desire, recognize such a resolution and act accordingly as requested by it, should you so see fit.

PUBLIC INSTRUCTION, DEPARTMENT OF: State Attendance Division, funds for operation of.

March 10, 1939.

Mr. Grover Van Duyn,
Assistant Superintendent of Public Instruction,
State House,
Indianapolis, Indiana.

Dear Mr. Van Duyn:

I have your letter of March 9, 1939, in which you request an official opinion. Your letter states: